

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
SUBREGION 24**

Betterroads Asphalt Corporation, a/k/a  
Betterroads Asphalt LLC

and

Virgin Islands Workers Union

---

CASES: 12-CA-183927  
12-CA-187042

**BETTERROADS ASPHALT CORPORATION A/K/A BETTERROADS ASPHALT LLC'S  
BRIEF**

COMES NOW, Betterroads Asphalt Corporation, a/k/a Betterroads Asphalt LLC by and through the undersigned Counsel and respectfully states:

As the Board is aware the parties entered into a set of Stipulation of Facts in the above referenced matter. (See Joint Motion and Stipulation of Facts and Documents). That Motion was approved on June 14, 2018 by way of Judge Dibble's order. Pursuant to those Stipulations of factual issues which otherwise had been litigated or in reminded controversy, the parties have agreed upon them, and it is pursuant to this document that the parties may now proceed with their Briefs before the Board.

I. The controversies before the Board were consolidated pursuant to an Order consolidating cases 12-CA-183927 and 12-CA-187042; which was entered on January 31, 2017 pursuant to Section 10 (b) of the National Labor Relations Act.

The charge brought forth by the Union in case 12-CA-183927 is attached to the parties' Stipulation as Exhibit 1-A; where the Union claims that since about September 2016 *Employer had failed to bargain collectively and in good faith with the below named Union by unilaterally changing its past practices of paying unit employees' wages on a weekly basis and without affording the Union notification and an opportunity to bargain.*

The Charge filed under 12-CA-187042 on October 26, 2016 claims that since about October, 2016 *the Employer through its officers, agents and representatives failed and refused to bargain collectively and in good faith with the below named labor organization chosen by a majority of its employees in an appropriate unit, by unilaterally implementing a plant closure and by terminating all its unit employees without prior notice and/or* affording the Union and opportunity to bargain over its decision and/or the effects of it.

Charge 12-CA-187042 on December 28, 2016 was amended to wit: Since about September 2016, *the above named Employer, through its officers, agents and representatives has failed and refused to bargain collectively and in good faith with the below named labor organization chosen by a majority of its employees in an appropriate unit, by failing to bargain with the Union over the weekly wages and effects of its plant closure.* Accordingly and pursuant to the amendment the two issues before the Board at this time are the Union claims commencing September 2016. The claim that Employer allegedly failed or refused to bargain collectively and in good faith with the Union over their weekly wages and the effects of its plant closure; and that since October 2016 the Employer failed or refused to bargain collectively and in good faith with the Union by unilaterally implementing a plant closure and terminating all its Union employees without prior notice and/or affording the Union an opportunity to bargain over its decisions and/or effects; all arose per the Union at the earliest on September, 2016.

II. The Employer herein without having to rehash what has already been stipulated to by the parties will simply address those facts and issues which are relevant for purposes of its position in this brief. Relevant to the controversy and in fact prior to

the Union's initial claim period for which its charges apply and as demonstrated on Stipulation number 28; on August 22, 2016 a meeting was held between attorney Wilfredo A. Géigel, Mr. Nicholas and Union Secretary Sharon Gilbert on behalf of the Union; as well as Ms. Orta on behalf of the Respondent. During the bargaining session the Employer advised the Union that the Respondent was planning to close its operation in St. Thomas, but that at the time of the meeting, there was no effective date in place. This was the first time the Employer and Union discussed this during a bargaining session, not referenced by the Union. Approximately ten (10) days after that meeting took place, the Respondent advised the Union that it would be closing the operation due to the financial constraints imposed upon it by its creditors. (See Stipulated Fact No. 31). Pursuant to that notification, the Union was advised that operations would be ceasing within the next ninety (90) days or when the pending projects were completed; whichever occurred first. From this point on communications were complicated between Counsel and the Union due to the unexpected health complications of attorney Wilfredo A. Géigel which kept him out of the office and hospitalized occasionally in Puerto Rico. (See Stipulated Fact No. 32).

On September 30, 2016 the Employer through engineer Perez-Duran advised the remaining employees that Respondent was ceasing all operations and employments in the Virgin Islands. (See Stipulated Fact No. 35). Even after the actual closing of the St. Thomas' facility of September 30, 2016; the undersigned held several telephone conference with Mr. Nicholas and met with him (See Stipulated Fact No. 37). The meeting was a clear showing a good faith and to explain the circumstances, to Mr. Nicholas, under which Betterroads had essentially been handcuffed. A situation which

was both compounded and confirmed later by the involuntary bankruptcy petition filed by some of its creditors (See Exhibit 1 – Docket Sheet of Bankruptcy case).

Pursuant to the aforementioned, the charge that the Employer failed to and refused to bargain collectively and in good faith as it pertains to the plant closure, is not accurate. The fact of the matter is that as demonstrated by the Stipulated Facts, the Employer did in fact meet with the Union, through Counsel prior to the actual closure taking place. Certainly irrespective of any agreements, proposals, or suggestions the fact of the matter was that both employer and Union members were subject to the creditors of the Employer and their unilateral bad faith actions which resulted in the plant closing. Thus, ultimately this is a not an issue of a lack of good faith or a refusal to bargain collectively, it is but rather a set of factual circumstances which were beyond the control of both parties in this case. Which is also applicable to the charge of the alleged failure to bargain with the Union over the effects of the plant closure. Still in the end, Betterroads meet and discussed this issues with the Union.

**III.** The Employer herein does not deny what the effects of the plant closure are to all parties involved. Obviously and most important for purposes of the matter before us, is the impact on the twelve (12) employees listed (Stipulated Fact No. 40) whom were working at the St. Thomas facility at the time (it should be underscored that this controversy is strictly limited to these twelve (12) employees who were working at the time of all the allegations at the St. Thomas facility).

The initial charge at 12-CA-183927 as it pertains to the Employer's alleged failure to bargain and act out of good faith and in changing its past practice of paying unit employees' wages on a weekly basis is similarly situated to the previous allegations.

Although not dated in the declaration for the charge the filing date is September 9, 2016; which again brings us back to the initial date of this controversy; according to the Union which occurred after the initial meeting with Counsel of August 22<sup>nd</sup>, (Stipulated Fact No. 28), and after the September 2, 2016 notification of the closing of operations (Stipulated Fact No. 31). Thus this charge is directly related to the previous one as it pertains to the closing, given that the catalyst leading to this charge was again the unilateral actions by the creditors of Betterroads (Stipulated Fact No. 38) which forced it to bring to a halt all of its operations including the one in St. Thomas in which the members of the Unit were working.

Thus, Betterroads herein counters the charge that it purposely refused to bargain collectively or in good faith at any time when clearly, prior to the actions which led to this charge and also following the actions that led to this charge, through its attorneys in the Virgin Islands, the Employer met with the Union leader. Accordingly is not as if to say that Betterroads simply took a position of indifference as to the claims by the Employees, to the contrary and to such an extent it is demonstrated herein, in the actions by Betterroads to precisely act, out of good faith, and watch out for the best interests of the Employees.

#### **Further Actions in Good Faith By Betterroads**

The Government of the Virgin Islands, pursuant to the plant closing act initiated a claim against this Employer in case number ST-16-CV-10 in Superior Court of the Virgin Islands. The Government's action against Betterroads is for violation of the plant closing act which in part looks after the employees' interests. Most importantly is the fact that in that case the parties at the time of filing of this Brief are still engage in the language of

their Stipulation. Significantly the Employer has authorized the Federal Highway Administration to transfer U.S. Department Labor Funds in the amount of \$113,386.34 from contract payments which would otherwise have been given to Betterroads; to be disperse to satisfy the payment of wages to the Respondent's employees; including the Unit employees in this case. (Exhibit 2). As a result the Unit employees' back wages owed and payment for any benefits including payment for accrued sick and annual leave will be included as part of that payment. More importantly and to the benefit of the twelve (12) members in this case is that pursuant to the Virgin Islands Law they have a right to collect severance and as such they will be receiving this additional benefit which they would otherwise not be entitled to; had it not been for this protection under the Law and Betterroads voluntary actions. As such any claim for interest or penalty such as a Transmarine would be akin to a double taxation on Respondent.

### **CONCLUSION**

The Claim by the Unit commenced in September of 2016, yet the Employer began discussing these issues in good faith with the Union on August 22<sup>nd</sup>, when it met with Counsel in the Virgin Islands. While clearly and ultimately the end result was not the one the Union was looking, for ultimately and in view of the realistic circumstances facing both parties at the end of the day the what's most important is that the Employees well being has been front and center to Employer. Betterroads cannot be accused of not acting in good faith as its actions demonstrate they have. This if front and center in the meetings and in the voluntary actions of Betterroads which provide for a source of indemnity to the twelve (12) Unit members.

**WHEREFORE**, it is respectfully request that the Board be advised of all of the above and issue its final ruling pursuant to the Stipulation entered by the parties and finding that Betterroads did not act in bad faith nor that it did not agree to bargain.

Respectfully submitted,

GS LAW OFFICES P.C.  
Attorney for Respondent

Dated: July 10, 2018

BY: /s/Eugenio W.A. Géigel-Simounet  
Eugenio W.A. Géigel-Simounet, Esq.  
VI Bar 999  
PO Box 25749  
Gallows Bay, St. Croix, VI 00824  
Tel. 340-778-8069; Fax 340-773-8524  
[egeigel@gs-lawoffices.com](mailto:egeigel@gs-lawoffices.com)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 10<sup>th</sup>, day of July, 2018, I caused a true copy of the forgoing document to email to:

Charles Nicolas, President  
Virgin Island Workers Union  
P.O. Box 3112  
Christiansted, VI 00822  
[viworkersunion@yahoo.com](mailto:viworkersunion@yahoo.com)

Ana Ramos, Esq.  
NLRB Sub Region 24  
525 F.D. Roosevelt Ave., Suite 1002  
San Juan, Puerto Rico 00918-1002  
[ana.ramos@nlbr.gov](mailto:ana.ramos@nlbr.gov)

Maria Margarita Fernandez  
Field Attorney  
NLRB, Subregion 24  
525 F.D. Roosevelt Ave., Suite 1002  
San Juan, PR 00918-1002  
[maria.fernandez@nlrb.gov](mailto:maria.fernandez@nlrb.gov)

/s/ Eugenio W.A. Géigel-Simounet, Esq.